

## UTILITIES DIVISION[199]

### Adopted and Filed

#### Rule making related to local exchange competition rules

The Utilities Board hereby amends Chapter 38, “Local Exchange Competition,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 476.2 and 476.15.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.2, 476.15 and 476.100 and 2018 Iowa Acts, House File 2446.

#### *Purpose and Summary*

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules that are outdated or inconsistent with statutes and other administrative rules. These amendments are intended to eliminate obsolete provisions and update other provisions which continue to be necessary in relation to the Board’s exercise of federally delegated authority to review and mediate or arbitrate interconnection agreements and determine if rates for wholesale services are just and reasonable.

The Board issued an order commencing rule making on March 27, 2018. The order is available on the Board’s electronic filing system, [efs.iowa.gov](https://efs.iowa.gov), under Docket No. RMU-2016-0028.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 25, 2018, as **ARC 3752C**.

The Board received written comments from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Qwest Corporation d/b/a CenturyLink QC (CenturyLink); and the Iowa Communications Alliance (ICA). These stakeholders were generally supportive of the proposed amendments. CenturyLink proposed a change to rule 199—38.4(476) regarding unbundling of network elements, and ICA proposed further revisions to rule 199—38.6(476) regarding terminating access charge complaints.

The Board adopted the amendments as published under Notice except for one change. The Board adopted one revision to rule 199—38.6(476) (Item 5) as suggested by ICA. As adopted, the amendment strikes a clause that refers to the stricken legacy provisions regarding exchange of traffic and monetary compensation for local traffic.

#### *Adoption of Rule Making*

This rule making was adopted by the Utilities Board on October 8, 2018.

#### *Fiscal Impact*

After analysis and review of this rule making, the Board tentatively concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

### *Jobs Impact*

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on employment in Iowa.

### *Waivers*

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of a Board rule under rule 199—1.3(17A,474,476).

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making will become effective on December 12, 2018.

The following rule-making actions are adopted:

ITEM 1. Rescind the definitions of “Interim number portability” and “Provider number portability” in subrule **38.1(2)**.

ITEM 2. Rescind and reserve rule **199—38.2(476)**.

ITEM 3. Amend rule 199—38.4(476) as follows:

#### **199—38.4(476) Unbundled facilities, services, features, functions, and capabilities.**

##### **38.4(1) ~~Initial tariff~~ Tariff filings.**

*a. Filing schedule.* Each local exchange carrier shall file ~~initial~~ tariffs implementing unbundling for the facilities enumerated in paragraph “*b*” ~~within 90 days of the board’s final order adopting these rules, except for local exchange carriers with fewer than 75,000 access lines which must file initial unbundling tariffs on or before July 1, 1997.~~ 38.4(1) “b.” The obligation to file a tariff shall not apply to a rural telephone company until the conditions specified in 47 U.S.C. Section 251(f)(1) have been met.

*b. ~~Initial list~~ List of unbundled essential facilities.* Each local exchange carrier’s ~~initial~~ tariff filing shall, at a minimum, unbundle the following essential facilities, services, features, functions, and capabilities: loops, ports, signaling links, signal transfer points, facilities to interconnect unbundled links at the central office, interoffice transmission facilities, ~~directory listings in white pages, directory listings in yellow pages,~~ listings in the directory assistance database, inbound operator services including ~~busy-line~~ busy-line verification and call interrupt, interconnection to the 911 system, and interconnection to the tandem switch for routing to other carriers.

**38.4(2) ~~Subsequent requests~~ Requests for unbundled facilities.** Except as allowed in subrule 38.4(3), requests to unbundle facilities, services, features, functions, and capabilities shall be processed as follows:

*a. ~~Subsequent to the initial tariff filings provided for in subrule 38.4(1) above,~~ A* competitive local exchange service provider may make a bona fide request of a local exchange carrier to make additional unbundled essential facilities available. After receiving a request for additional unbundled essential facilities, the local exchange carrier shall respond within 30 days of the request ~~by either by~~ agreeing to the request or by denying the request. If the local exchange carrier agrees to fulfill the request, ~~it the carrier~~ shall file a tariff unbundling the essential facility within 60 days of the initial request.

*b. If the local exchange carrier denies the request, a competitive local exchange service provider may petition the board to classify the requested facility as essential, as defined by Iowa Code section 476.100(2), and to require the local exchange carrier to make ~~it the requested facility~~ available on an*

unbundled basis by filing a tariff. In such a petition, the competitive local exchange service provider shall provide information to the board showing how the requested facility meets the definition of essential facility found in Iowa Code section 476.100(2).

The petitioning party under this subrule may state a preference for proceeding by rule making or contested case, but the board will select the process to be used.

**38.4(3) to 38.4(5)** No change.

ITEM 4. Amend rule 199—38.5(476) as follows:

**199—38.5(476) Cost standards.**

**38.5(1)** *Existing standards.* In addition to the standards in this rule, the cost support requirements of rules 199—22.12(476) and 22.13(476) shall apply to all of a local exchange carrier's rate proceedings prior to the implementation of price regulation.

**38.5(2)** **38.5(1)** *Incremental cost standard.* In general, each local exchange carrier shall price each of its services above the total service long-run incremental cost of providing each service. However, this incremental cost standard shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).

**38.5(3)** *Imputation test.* In general, prices for each retail service offered by a local exchange carrier should equal or exceed the sum of an allocation of the tariffed prices for all unbundled essential facilities used to provide the service and the incremental costs of all other facilities or services that are components of the retail service. However, this imputation test shall not be construed to require any increase in the rate for any service prior to the implementation of price regulation, nor to require any price increase that is greater than allowed under a price regulation plan or under Iowa Code section 476.97(11).

**38.5(4)** *Reporting requirements.* A local exchange carrier shall provide current information to the board showing that the conditions of the incremental cost standard described in subrule 38.5(2) and the imputation test described in subrule 38.5(3) continue to be met whenever it proposes to lower the price of a retail service, it proposes the initial price of an unbundled essential facility, it proposes to raise the price of an unbundled essential facility, or it offers a new service.

**38.5(5)** **38.5(2)** *Competitive local exchange service providers.* Cost support will generally not be required for the tariff filings from competitive local exchange service providers, with the exception of 38.2(1)“b.”.

ITEM 5. Amend rule 199—38.6(476) as follows:

**199—38.6(476) Compensation for termination of telecommunications services Terminating access charge complaints.**

**38.6(1)** *Mutual exchange of traffic.* Until the board approves monetary compensation and until tariffs for the compensation are in effect, each local utility shall terminate local and extended area service calls on a mutual exchange of traffic basis, at no charge to the originating provider. As an alternative, a local utility may elect the negotiation, mediation, and arbitration procedures available under 47 U.S.C. Section 252, by notifying the other affected local utility and the board in writing.

**38.6(2)** *Requests to end mutual exchange of traffic.* A facilities-based local utility may file a cost-based tariff for monetary compensation for terminating local access service, provided its filing includes a showing that in six consecutive calendar months of mutual traffic exchange between it and another facilities-based local utility the total terminating to originating traffic for the entire six-month period was unbalanced by a ratio of at least 55 percent terminating to 45 percent originating. The tariff filing must include appropriate cost support information. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility's service territory or within a service territory with extended area service to the local utility's service territory. On the date the tariff becomes effective, compensation on a mutual exchange basis will end.

**38.6(3)** *Monetary compensation requirements for other utilities.* Within 60 days of board approval of a tariff for monetary compensation for terminating local access service, each other local utility operating

~~within the service territory of the local utility or within a service territory with extended area service to the local utility must file a tariff for monetary compensation for terminating local access service. The tariff filing must include sufficient evidentiary support to allow the board to determine that the compensation will be reciprocal. The terms and conditions listed in the tariff shall be applicable to all local utilities operating within the local utility's service territory or within a service territory with extended area service to the local utility's service territory. Until a local utility has an approved tariff in effect, it must charge the rates for terminating local access service in the approved tariff of the local utility with which it exchanges traffic.~~

~~**38.6(4) Terminating access charge complaints.** No local utility shall deliver traffic to another local utility as local service or extended area service terminating traffic, to which mutual exchange or monetary compensation would apply under this rule, if the terminating traffic is long distance or some other type of traffic for which terminating switched access charges would otherwise have been payable. Any local utility may bring a complaint to the board if another local utility has violated this requirement or taken insufficient measures to determine whether switched access charges would otherwise have been payable. The board may order appropriate refunds with interest of compensation received by a local utility in violation of this rule payment or refund of compensation withheld from or received by a local utility in violation of this rule, with appropriate interest or tariffed late payment penalties.~~

ITEM 6. Amend rule 199—38.7(476) as follows:

**199—38.7(476) Mediation and arbitration.** This rule shall apply to all local utilities, except for rural telephone companies as defined in Section 3(47) of the Telecommunications Act of 1996. The board may make all or part of this rule applicable to a rural telephone company or companies in proceedings relating to Section 251(f) of the Act.

**38.7(1) Voluntary negotiations.**

*a. Initiation of negotiations.* A telecommunications carrier initiates the negotiation process by requesting interconnection, services, or network elements as defined in the Act from an incumbent local utility pursuant to Section 252(a)(1) of the Act. The day the request is received by the local utility is day one of the schedule set for resolution of all issues. Within five days of receipt of the request, the local utility shall file ~~ten copies of the request~~ with the board using the board's electronic filing system a copy of the request and a statement of the date the request was received ~~with the board.~~

*b.* No change.

**38.7(2) Mediation.**

*a. Initiation of mediation.* At any time during the negotiations, any party to the negotiations may request mediation. The request shall be ~~made in writing to~~ filed with the board using the board's electronic filing system and ~~copies of the mediation request shall be~~ simultaneously served on the other parties. Alternatively, parties may ~~jointly submit their request in writing to file a joint request for mediation with the board.~~ A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone and fax numbers of the parties or their representatives.

*b. to e.* No change.

**38.7(3)** No change.

**38.7(4) Board review of agreements.**

*a. Filing of agreements.* All interconnection agreements shall be filed with the board for approval within 15 days after the issuance of a final decision on the arbitrated issues, in the case of arbitrated agreements, or, in the case of negotiated agreements, after the execution of the agreement. ~~An original and three copies shall be filed.~~

~~*b. Notice of negotiated agreements, amendments, and adoption of agreements.* Notice of the filing of a negotiated interconnection agreement, an amendment to an agreement, or adoption of an agreement will be posted within five working days after the filing date, on the board's Web site, <http://www.state.ia.us/iub>.~~

*e. b. Comments on arbitrated agreements.* Within ten days following the filing of the arbitrated agreement with the board for review, the parties involved in the arbitration, and any other interested party, may submit written comments to the board supporting either approval or rejection of the agreement. If

the board does not approve or reject the agreement within 30 days after submission by the parties of an agreement adopted by arbitration, the agreement shall be deemed approved.

~~d.~~ c. *Comments on negotiated agreements and amendments to agreements.* Within 30 days of the filing date of the negotiated agreement or amendment, the parties involved in the negotiations and any other interested party may submit written comments with the board supporting either acceptance or rejection of the agreement or amendment. If no comments are filed and no issues are generated by the internal board review, the agreement or amendment shall be deemed approved 41 days after the filing date. If comments opposing approval are filed or the internal board review recommends investigation, the agreement or amendment shall be docketed. The docketing order shall be issued within 40 days after the filing date. If the board does not issue a decision on a docketed filing within 90 days after the filing date, the agreement or amendment shall be deemed approved.

~~e.~~ d. *Comments on adoption of agreements.* No board approval is necessary when there is an adoption of the terms, conditions, and rates from an approved interconnection agreement. The adoption is effective upon filing. If there are terms, conditions, or rates in the filing that are not from an adopted agreement, then the filing is subject to the provisions of paragraph ~~38.7(4)~~ 38.7(4) ~~"d."~~ "c."

~~f.~~ e. *Indefinite terms, conditions, or rates.* When the agreement or amendment contains terms, conditions, or rates that are not yet agreed to, the parties shall file an amendment to the agreement once they have reached agreement on the terms, conditions, or rates.

[Filed 10/8/18, effective 12/12/18]

[Published 11/7/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/7/18.